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Sequence  
Number: 12-03-08  
Rule ID(s): 3903  
File Date: 12/05/2008  
Effective Date: 02/18/2009

**Rulemaking Hearing Rule(s) Filing Form**

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

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**Revision Type (check all that apply):**

☒ Amendments  
☐ New  
☐ Repeal

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-16	Medical Necessity
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-16-.01	Definitions
1200-13-16-.05	Medical Necessity Criteria

Chapter 1200-13-16  
Medical Necessity  
Amendments

Paragraph (23) of rule 1200-13-16-.01 Definitions is deleted in its entirety and replaced with a new paragraph (23) which shall read as follows:

(23) Home Health Services shall mean those services as defined at 1200-13-13-.01 and 1200-13-14-.01.

Statutory Authority: T.C.A. 4-5-202, 71-5-105, 71-5-109.

Part 3. of subparagraph (d) of paragraph (4) of rule 1200-13-16-.05 Medical Necessity Criteria is amended by deleting the citations "1200-13-13-.04(14)(c) or 1200-13-14-.04(14)(c)" and replacing them with the citations "1200-13-13-.04(7)(f) or 1200-13-14-.04(8)(f)" so as amended part 3. shall read as follows:

3. Private Duty Nursing services are separate services from home health services. When private duty nurses are authorized by the MCC to provide home health aide services pursuant to rule 1200-13-13-.04(7)(f) or 1200-13-14-.04(8)(f), these services must meet the requirements described at part 1. immediately above.

Part 4. of subparagraph (d) of paragraph (4) of rule 1200-13-16-.05 Medical Necessity Criteria is amended by deleting subparts (ix) and (xi) and renumbering remaining subparts accordingly so as amended part 4. shall read as follows:

4. Home health services may not be denied on any of the following grounds:
  - (i) Because such services are medically necessary on a long term basis or are required for the treatment of a chronic condition;
  - (ii) Because such services are deemed to be custodial care;
  - (iii) Because the enrollee is not homebound;
  - (iv) Because private insurance utilization guidelines, including but not limited to those published by Milliman & Robertson or developed in-house by TennCare managed care contractors, do not authorize such health care as referenced above;
  - (v) Because the enrollee does not meet coverage criteria for Medicare or some other health insurance program, other than TennCare;
  - (vi) Because the home health care that is needed does not require or involve a skilled nursing service;
  - (vii) Because the care that is required involves assistance with activities of daily living;
  - (viii) Because the home health service that is needed involves home health aide services; or
  - (ix) Because the enrollee meets the criteria for receiving Medicaid nursing facility services.

Statutory Authority: T.C.A. 4-5-202, 71-5-105, 71-5-109.

RULES 1200-13-16-.01(23) DEFINITIONS; 1200-13-16-.05(4)(d)3. and 4. MEDICAL NECESSITY CRITERIA.

#### STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. Name of Bureau: Bureau of TennCare
2. Rulemaking hearing date: November 18, 2008

3. Types of small businesses that will be directly affected by, bear the cost of, and/or directly benefit from the proposed rules:

Small businesses that will potentially be impacted are home health agencies which will lose revenue due to TennCare placing certain limits on coverage of home health services and private duty nursing services for adults in the TennCare program.

4. A description of how small businesses will be adversely impacted: There is the potential that home health agencies providing services to TennCare enrollees will lose revenue due to limits being placed on coverage of home health services and private duty nursing services.

5. Whether, and to what extent, alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses, and why such alternatives are not being proposed:

It is not in the best financial interest of the State to continue paying for home health services and private duty nursing services that are more liberal than other states. CMS suggested that we address the issue by revising our definition of the home health benefit and by limiting the optional private duty nursing benefit.

6. A comparison of the proposed rule with federal or state counterparts:

We are promulgating rules that are consistent with Amendment #6 to the TennCare II 1115 Demonstration Waiver submitted to CMS on February 29, 2008 and approved by CMS on July 22, 2008. The rule is also being promulgated to be consistent with the TennCare Medicaid and TennCare Standard rules which re-define the home health benefit to be more consistent with the Medicare home health benefit. The rule revises the private duty nursing benefit for adults to indicate that private duty nursing services will be available when medically necessary to support the use of ventilator equipment or other life-sustaining medical technology when constant nursing supervision, visual assessment, and monitoring of both equipment and patient are required.